

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES SCOTT,

Plaintiff,

Case Number: 06-13313

v.

HONORABLE AVERN COHN

JAMES FREEBURN,

Defendant.

ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff James Scott, proceeding pro se, filed a complaint against defendant James Freeburn, a corrections officer at the facility where plaintiff is incarcerated, claiming that defendant violated his constitutional rights by retaliating against him for exercising his right to file lawsuits and grievances. Plaintiff claims a violation of his First Amendment right of access and intentional infliction of emotional distress. He seeks compensatory and punitive damages. The case was referred to a magistrate judge for all pre-trial proceedings. Defendant filed a motion for summary judgment. The magistrate judge issued a report and recommendation (MJRR) recommending that defendant's motion be granted. Plaintiff filed objections. The Court agreed with the magistrate judge, adopted the MJRR, and dismissed the case. See Order Adopting Report and Recommendation and Granting Defendant's Motion for Summary Judgment and Dismissing Case, filed April 17, 2007.

II.

Now before the Court is plaintiff's paper styled "Motion to Alter or Amend Judgment" filed under Rule 59(e) in which he requests that the Court reconsider the Order of April 17, 2007. The Court construes as a motion for reconsideration under E.D. Mich LR 7.1(g),¹ which provides in relevant part:

Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

Plaintiff fails to satisfy this standard. Plaintiff says that the Court did not consider his objections to the MJRR that (1) the magistrate judge erred in its interpretation "of law and fact regarding policy and liberty interest," and (2) the magistrate judge failed to "consider the fact that plaintiff was penalized for exercising his constitutional rights when he went to pick up his legal mail." Both of these objections pertain to the magistrate judge's legal analysis of plaintiff's claims. The Court finds that the magistrate judge correctly analyzed plaintiff's claims under the First Amendment for alleged interference with his legal mail and for retaliation. The magistrate judge did not err in setting out the facts or applying the law. The magistrate judge also considered plaintiff's factual allegation that he was penalized regarding his legal mail, but concluded that the facts did not rise to the level of a constitutional violation. The Court agrees. Plaintiff has

¹Fed. R. Civ. P. 59(e) pertains to motions to alter or amend a judgment. Plaintiff here is really seeking the Court to reconsider its reasons for granting defendant's motion for summary judgment, which is more properly brought as a motion for reconsideration.

therefore failed to demonstrate a palpable defect by which the Court has been misled or otherwise show that the Court's decision adopting the MJRR and dismissing the case was entered in error. Accordingly, plaintiff's motion for reconsideration is DENIED.

SO ORDERED.

Dated: May 3, 2007

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and James Scott, 124522, G. Robert Cotton Correctional Facility, 3510 N. Elm Street, Jackson, MI 49201 on this date, May 3, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160